Nabors Alaska Drilling, Inc. *and* Alaska State District Council of Laborers, AFL–CIO *and* Steven Couture *and* Frank Anderson. Cases 19–CA–24334, 19–CA–24373, and 19–CA–24400

April 8, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

On March 27, 1997, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt her recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Nabors Alaska Drilling, Inc., Anchorage, Alaska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

George I. Hamano, Esq., for the General Counsel.
William F. Mede, Esq. and *Patrick J. McCabe, Esq. (Owens & Turner)*, of Anchorage, Alaska, for the Respondent.
Kevin Dougherty, Esq., of Anchorage, Alaska, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. These cases were tried in Anchorage, Alaska, on August 13–16, and October 1–4, 1996, and are based on a consolidated complaint alleging, inter alia, that Mike Pearson, Steven Couture, and Frank Anderson were discharged in violation of Section 8(a)(1) and (3) of the Act.[1]

[1] The charge in Case 19–CA–24334 was filed by Alaska State District Council of Laborers, AFL–CIO (the Union), on February 1, 1996, and amended on May 13, 1996. The charge in Case 19–CA–24373 was filed by Steven Couture on February 20, 1996. The charge in Case 19–CA–24400 was filed by Frank Anderson on February 29, 1996. On April 3, 1996, a second order consolidating cases, consolidated complaint and notice of hearing issued consolidating these cases for hearing. Two other cases consolidated for hearing, Cases 19–CA–24152 and 19–RC–13080, are the subject of a separate decision (J20-97.SF) [*Nabors Alaska Drilling, Inc.*, 325 NLRB No. 104 (April 8, 1998)]. Counsel for the General Counsel's unopposed motion to correct the transcript of these hearings is granted.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The Respondent is a State of Alaska corporation with its main office and place of business in Anchorage, Alaska, where it is engaged in the business of oil drilling services throughout the State of Alaska. During the 12 months preceding issuance of the consolidated complaint, the Respondent had gross sales of goods and services valued in excess of $500,000 and sold and shipped goods or provided services from its facilities within the State of Alaska to customers outside the State or sold and shipped goods or provided services to customers within the state, which customers were themselves engaged in interstate commerce by other than indirect means of a total value in excess of $50,000. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Alaska State District Council of Laborers, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The consolidated complaint alleges and the Respondent admits that on December 27, 1995, it discharged Mike Pearson and on February 10, 1996, it discharged Steven M. Couture and Frank Anderson and has failed and refused to reinstate them since those dates. The complaint further alleges and the Respondent denies that these employees were discharged because they were suspected of supporting and assisting the Union and engaging in concerted activities and to discourage employees from engaging in such activities in violation of Section 8(a)(1) and (3) of the Act.

Facts

1. Background

Nabors drills for oil on arctic drilling rigs on the North Slope of Alaska and elsewhere. Its North Slope operations consist of four rigs in Prudhoe Bay and three rigs in the Milne Point area. The Union attempted to organize employees who worked on Nabors' Alaska rigs in the spring and summer of 1995. Although the Union attained authorization cards from 49 percent of the employees, it ultimately lost the November 20, 1995 representation election conducted by the NLRB. Thereafter, the Union filed timely election objections. In my decision dealing with the Union's objections to conduct affecting the election and a consolidated unfair labor practice allegation that Nabors violated Section 8(a)(1) of the Act by denying the Union access to remote camps during the preelection period to contact off-duty employees, I found that Nabors violated the Act by denying access and by threaten-

ing employees and giving the impression that union activities were under surveillance. In adddition, I recommended that a new election be held based on the denial of access, threats, and interrogation. This case involves three postelection discharges.

2. Analytical framework

Section 8(a)(1) and (3) of the Act provides:

> It shall be an unfair labor practice for an employer—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 . . . .
>
> . . . .
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .

In *Wright Line*,[2] the Board outlined the burden and allocation of proof in cases which turn on the employer's motivation in taking personnel action against an employee as follows:

> First we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place event in the absence of the protected conduct.

The Board has noted that use of the phrase ''prima facie'' case to describe the burden of the General Counsel does not substantively vary from use of the term, ''burden of persuasion.''[3] Accordingly,

> the General Counsel bears the burden of demonstrating that the employer acted with discriminatory motive throughout the case. Although the Board labels the General Counsel's burden that of establishing a ''prima facie'' case, it has, in fact, traditionally required the General Counsel to sustain the burden of proving that the employer was motivated by anti-union animus.[4]

3. Discharge of Pearson

Facts

The parties stipulated as follows: Ronald Mike Pearson worked as a forklift operator on rig 22E for Nabors in 1995. In addition to driving a forklift, Pearson's job was to serve as the leadman for the roustabouts. There were two roustabouts that worked under Pearson. Pearson had worked on and off for Nabors. His employment history was as follows: December 28, 1988, to May 8, 1992, and February 8, 1993, to December 27, 1995. While Pearson worked on rig 22E in 1995, Nabors' client was British Petroleum Exploration (BPX). Gary Gibson was a driller on rig 22E and Pearson's immediate supervisor. Laverne Linder was the rig supervisor for rig 22E and Gibson's immediate supervisor. Jimmy Pyrone was a consultant for Nabors' customer BPX who acted as BPX's field representative for rig 22E.

The stipulation continues as follows: on November 9, 1995, Pearson was warned about not wearing safety glasses. Larkin issued a personnel & payroll action notice to Pearson on November 9, 1995. The notice advised Pearson that, ''Mr. Pearson has been asked for his input for alternative suggestions. Since that time he has been told by tool pusher to keep them on. He is in violation of Nabors and its customer BPX safety policies. This is a final warning.''

Concluding, the stipulation states: on November 10, 1995, Pearson was stopped for speeding 54/35-mile-per-hour zone. The citation was #10475. The citation noted that Pearson had not been wearing safety glasses. On November 11, 1995, BPX's field manager Tom Gray issued a memorandum to BPU field representatives on rig 22E which specifically referenced traffic citation #10475, the citation Pearson had received. On November 22, 1995, Belinda Wilson, Nabors' personnel manager, issued a personnel & payroll action notice to Pearson for the traffic citation incident.

Pearson testified that he talked with employees frequently about unionization during the spring of 1995. When the Union became involved, Pearson began passing out union authorization cards in the chow line in plain view of anyone who wanted to see. He gave a card to his rig supervisor (also referred to as a tool pusher) Laverne Linder. He passed out cards in the bus where the drillers were present.

Pearson testified he spoke frequently with Linder about the Union. As the election neared, Linder told Pearson that Nabors could not afford the Union. Linder testified that Pearson was easy to work with and a proficient operator. However, Linder noticed that Pearson exhibited animosity toward Nabors' pay and benefit package and was outspoken about safety. Linder agreed that Pearson was quite outspoken about the Union. Gibson, Pearson's driller, also agreed that Pearson was outspoken regarding the Union.

Pearson testified that after an antiunion meeting conducted by Linder, ''Laverne [Linder] pulled me off to the side . . . and asked me what do you think it'd take for these guys to just forget about this?''

Coworkers testified that Pearson was outspoken during weekly safety meetings. For example, Pearson asked if the pad eyes could be checked for cracks. Another employee recalled that Pearson suggested reflective vests for employees. On two occasions, Pearson requested that employees who were sick be paid or sent home.[5] The parties stipulated that Pearson addressed and raised legitimate safety issues frequently throughout his tenure with Nabors.

Problems on Gibson's crew were reported to Linder by Nabors' customer BPX as early as April. Linder felt these problems were attributable to Pearson. Linder told Gibson to get his crew straightened out. He told Gibson to meet with Pearson and tell him not to be disruptive to the crew so that morale could be improved. Gibson explained that whenever

[2] 251 NLRB 1083, 1089 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[3] *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996).

[4] *Southwest Merchandising Corp. v. NLRB*, 53 F.3d 1334, 1340 (D.C. Cir. 1995).

[5] One of the employees was sent home. The other employee attempted to return to work but was taking codeine prescriptions while attempting to work up to 100 feet on the rig. This employee was sent to his room but paid for his time.

the crew went to lunch, Pearson would meet with them and they would come back in a bad mood and not wanting to work.

Nevertheless, in April or May Linder asked Pearson to perform as a relief for Gibson. Linder explained that he believed Pearson was capable of better work and thought this might act as a stimulus. Linder offered the position to Coyne after Pearson turned it down.

Many of Pearson's coworkers testified that he frequently failed to wear safety glasses. Pearson was aware of the requirement to wear safety glasses. Pearson felt that the glasses were a safety hazard and he testified he preferred not to wear them while in cab of his loader but never refused. His affidavit to the NLRB stated that he refused to wear these glasses while driving the loader because it had side shields and there were frequently people to the side of his loader. Pearson admitted that he was orally warned by various members of management that he needed to wear his glasses. There is no dispute that Pearson knew that policy required that he wear safety glasses while operating the forklift. However, Pearson was not the only employee who failed to wear his safety glasses.

On November 9, 1995, Larkin issued a personnel action to Pearson and Reed Thilmony for failure to wear safety glasses on numerous occasions. Before doing this, he asked management to ascertain whether accusations from a BPX representative that Pearson refused to put on safety glasses when so instructed were true. Larkin initially determined that there had been a misunderstanding. Larkin investigated further and determined that final warning notices were in order for Pearson and Thilmony. On Pearson's notice, Larkin wrote that Pearson had refused to wear safety glasses on a number of occasions when asked to do so.[6] Larkin warned Pearson that this was a final warning because he wanted Pearson to understand the seriousness of the situation. Thilmony also received a final warning.

On November 10, 1995, Pearson was stopped for speeding 54/35-mile-per-hour zone. The citation was citation #10475. The citation noted that Pearson had not been wearing safety glasses. Valentino Emberty, mechanic, testified that the truck Pearson was driving at the time of the citation had a malfunctioning speedometer and had received another speeding citation in a prior occasion. Emberty had seen other drivers operate Nabors' vehicles without wearing safety glasses. On November 22, 1995, Belinda Wilson, Nabors' personnel manager, issued a personnel & payroll action notice to Pearson for the traffic citation incident. Wilson explained that it takes around 9 days for her to receive the traffic citations after they are issued.

Despite the November 9, 1995 ''final warning,'' the November 22, 1995 was marked as a ''warning'' and stated, ''Please know and obey the road and safety regulations in your work area. The regulations have been designed for your safety and safety of others around you.'' Pearson was asked to sign for this personnel action with a Nabors' cross pen which he received that day as a safety award for preventing a spill. A random search of the Respondent's personnel files indicated 10 other personnel action notices for traffic citations over a 10-year period. Larkin did not find out about Pearson's November 10 traffic citation until December.

Shortly after the November 20 election, Linder told Pearson that the office wanted evaluations of everyone. Linder said he would be evaluating the crew. Later Pearson asked Gibson about his evaluation and Gibson told Pearson not to worry, he would get a good evaluation.[7]

In late December, a ''blow'' (phase 3, meaning life threatening) occurred. Pearson was extremely busy pulling people out of ditches. BPX personnel showed another driver where to plow and Pearson, who relieved that driver, poured mud in the spot indicated by the driver he relieved. The next day, December 21, Pyrone told Pearson that he had spilled mud on the pad. However, an investigation conducted by Richard Larkin, drilling superintendent, on December 21 concluded that no employee would be held responsible for the spill that occurred that night. Management concluded that it was their problem. Larkin spoke to Pearson and told him that no employee was going to be held responsible for the spill.

In the meantime, Pearson went to tool pusher Leonard Schiller's office and stopped to pick up his orders from the desk. No one else was present in the office. Next to the orders, Pearson found an undated typewritten note on plain 8-1/2 x 11 paper. In relevant part, the note stated,

> Mike—Good loader operator, keeps up on the yard and organizes things well. Always has to try and stir up the other guys or Gibby. Always talking bad about Nabors. Still trying to stir the guys up on the Union issue by telling them Nabors is going to take things away from them and cut pay. Very rude in meetings, doesn't pay attention, talks to Lee.

Pearson, who had heard a rumor that layoffs were being contemplated on Gibson's crew, testified he confronted Larkin and Schiller with the note and Larkin said, ''I don't know about this firing stuff, we'll leave it up to Gibby [Gary Gibson, Pearson's immediate supervisor].'' Larkin examined this note while on the witness stand and said he was not sure whether this was what Pearson showed him but he recalled that Pearson did show him something. In any event, according to Pearson, Schiller, ''eased off to the side and said he didn't want anything to do with this.''[8] Schiller and Larkin went out saying that they were going to talk with Gibby.

Larkin testified that he knew that there was further disciplinary action pending against Pearson and Thilmony. He

[6] Larkin knew that Pearson had refused to wear safety glasses on a number of occasions due to involvement in the Dupont safety program. Weeks before Pearson and Larkin discussed Pearson's dissatisfaction with Nabors' safety glasses. Larkin asked Pearson to help find safety glasses that would be to his liking. Pearson stated that the glasses currently being utilized were uncomfortable and that peripheral vision was distorted. Pearson never got back to Larkin with suggestions.

[7] Pearson and Gibson testified in substantial agreement on these facts and Gibson added that Pearson's attitude deteriorated after that.

[8] Schiller testified that he saw the note in the mechanics shop sometime in November. The mechanic was Valentino Emberty. Schiller read the note and left it in the mechanic's shop. Schiller never saw the note on his own desk. Schiller did not discuss the note with Pearson and did not know who wrote it. Schiller recalled that Pearson showed the note to him in Larkin's presence but neither of them read the note at that time. This was about 2 days after Schiller saw the note on Emberty's desk. The note was admitted in evidence provisionally. As the author was never discovered, it will not be entitled to any weight.

spoke to Gibson about this and gave him instruction about how to handle the discharges.

Gibson testified that Pearson had not followed directives to put on his safety glasses but Pearson got better toward the end. Gibson also saw Thilmony not wearing his safety glasses but Thilmony always put them on when told. Gibson decided to fire Pearson because Pearson caused ''all kinds of hazard on the rig'' and was causing too much chaos for the hands so that Gibson could not control the hands. Gibson thought that Pearson spent too much time with his roustabouts drinking coffee. When Gibson told Pearson he was going to let him go, Pearson asked for a second chance and Gibson called Belinda Wilson, personnel manager, and Larkin. However, the result was that Gibson lost his job as a driller.

On the following day, Larkin, who had returned to Anchorage, called the rig and was informed that Gibson had not discharged Pearson and Thilmony. Larkin decided that Gibson was not going to be a driller for Nabors any more if he had changed his mind over night about discharging two employees for safety matters. However, at this point, as far as Larkin was concerned, Pearson and Thilmony had not been discharged and Larkin conveyed this information to Joe Polya, a Shared Services[9] representative and a friend of Thilmony.

Larkin met with Denney, Wilson, and David Hebert, another drilling superintendent, on December 26 to determine what should be done. Larkin testified that he decided it would not be fair to saddle a new supervisor with Pearson and, accordingly, recommended that Pearson be fired. Larkin testified that his recommendation was not based on failure to wear safety glasses but due to safety concerns emanating from Pearson's negativism: ''It's on—it's on the negativism the keeps this—the crew stirred up. It's to where they come back, and they come back from coffee break or lunch or whatever, and it takes—the complaint was it took 15 to 30 minutes and possibly longer for them to settle back down and think about the job.'' Larkin recommended retaining Thilmony because Gibson had told Larkin that Thilmony was making some improvement and the problem was more in the nature of a personality conflict rather than a safety concern.

On December 27, 1995, Wilson wrote a personnel and payroll action notice for Pearson while he was in her office. She stated in that document that the reason for Pearson's discharge was ''personality conflict with supervisor.'' According to Wilson, Pearson asked if the reason for the discharge was a spill that had occurred on the rig. Wilson responded, ''I told him that they felt he was being adverse to the performance of his crew; that he was being agitative to his driller; he was questioning directive, and as his driller said, he doesn't have an off switch.''

After talking with Larkin about the discharge, Wilson was instructed to prepare a personnel and payroll action notice with more details. She mailed this second personnel notice to Pearson via regular mail. It was dated December 28, 1995, and stated, ''It has been requested that Mr. Pearson be removed from Nabors employment at this time. Rig personnel report repeated disruption involving Mr. Pearson and his crew members.''

[9] Nabors performs under contract with Shared Services Drilling, an enterprise formed by the owners of Prudhoe Bay such as ARCO Alaska, Inc., BPX, and Unocal.

Analysis

I find that the General Counsel has sustained the burden to persuade that Pearson's union activity was a motivating factor in the decision to discharge him. Moreover, as to the Respondent's affirmative defense that Pearson would have been discharged in any event, I find that the Respondent has not shown by a preponderance of the evidence that Pearson would have been discharged notwithstanding his union activity.

Pearson engaged in open union activities. Both Linder and Gibson were aware that Pearson was an outspoken union advocate. This knowledge is attributable to the Respondent. Direct evidence of animus, found in the companion cases, included statements by Linder that employees would ''lose their asses'' if the Union were voted in, a statement by Rod Klepzig, tool pusher on rig 27E, to sewer plant operator Steven Couture, that the Respondent could find out how employees voted during the election and that the Respondent would ''run off'' supporters of the Union after the election was over, interrogation of employees about how they would vote in the election, and threatening employees that if they voted the Union in, the oil rigs would be stacked.

The Respondent portrays Pearson as, ''a stubborn, intensely aggressive employee who believed he had no duty to obey directions from his supervisors if he did not agree with them.'' The Respondent notes Pearson's refusal to wear safety glasses while operating the forklift. However, there are three problems with this assertion. First, Larkin, the manager who made the decision to discharge Pearson, claimed that the safety glasses had nothing to do with the decision and both notices of discharge are silent regarding safety glasses. Second, Gibson, Pearson's immediate supervisor, claimed that Pearson had begun complying with the directive to wear safety glasses while operating the forklift. Finally, the Respondent gave Pearson a final warning for failure to wear safety glasses on November 9. The following day, he was given a speeding citation which included a notation that he did not have on safety glasses. The resultant personnel action was merely a warning.

The stated reason for discharge was Pearson's repeated disruption of the crew. The evidence indicates only that Nabors' client reported a ''problem'' with Gibson's crew and that Larkin and Gibson testified that they determined that Pearson was the ''problem'' because he agitated employees on break time. Pearson was admittedly at least an adequate forklift driver. His concerns for safety led to safety awards. Gibson told Pearson a month or two before his discharge that Pearson would be receiving a good evaluation. Moreover, Pearson's outspokenness was tolerated throughout two tenures with the Company. Under these circumstances, I find that the Respondent's defense fails.

4. Discharges of Steven M. Couture and Frank Anderson

Facts

According to Nabors' records, Steven M. Couture and Frank Anderson were discharged on February 10, 1996, for violation of the company rule prohibiting use of alcohol or

other illicit substances. Specifically, on the morning of February 10, Brian Buzby, tool pusher, testified he entered Steven Couture's office in the sewage plant, found Frank Anderson there with Steven Couture, and smelled marijuana smoke. Steven Couture and Frank Anderson deny that they smoked marijuana. It is undisputed that Buzby said nothing to them at the time about smelling marijuana smoke.

The parties stipulated as follows regarding Steven Couture: Steven M. Couture was hired by Nabors Alaska Drilling, Inc. on May 8, 1995. On that date, he received a copy of the orientation packet and executed a receipt for it. At some unspecified date prior to February 10, 1996, Steven Couture received and executed a receipt for a copy of Nabors Alaska Drilling Employees Safety Handbook. As of the morning of February 10, 1996, Steven Couture's position with Nabors was that of sewage plant operator. As sewage plant operator, Steven Couture reported directly to tool pushers Brian Buzby and/or Rod Klepzig.

The parties stipulated as follows regarding Frank Anderson: Frank Anderson has worked for Nabors at various times since at least 1982. Anderson's most recent period of employment with Nabors began December 20, 1994. On December 20, 1994, Anderson received and executed a receipt for the Nabors orientation packet. On January 4, 1996, Anderson received and executed a receipt for Nabors Alaska Drilling Employee Safety Handbook. As of the morning of February 10, 1996, Anderson's position with Nabors was that of pit watcher. The chain of command with respect to Anderson was Anderson reported to the driller, Charlie Martin, who in turn reported to Buzby or Klepzig.

The stipulation continues, Anderson and Couture were discharged on February 10, 1996. The personnel action notice issued to Anderson and Steven Couture specified they were discharged for ''Violation of Company Policy—Use of Alcohol or Other Illicit Substances.'' A copy of the personnel action notice specifying Nabors' reason for discharge of Anderson was mailed, return receipt requested, to Anderson and received by him on February 13, 1996. A copy of the personnel action notice specifying Nabors' reason for discharge of Steven Couture was mailed, return receipt requested, to Steven Couture and received by him on February 13, 1996.

Anderson testified that he was quite outspoken for the Union. He distributed union cards and literature. He stated he contacted other employees and tried to get them involved. He had conversations with his tool pushers Brian Buzby and Rod Klepzig as well as his driller Charlie Martin in which he was pretty outspoken about the Union. A few months before the election, Belinda Wilson, personnel manager, asked Anderson how Nabors could squelch this union talk and Anderson replied that a $1-an-hour raise would be a step in the right direction. Shortly thereafter, employees received a $1-per-hour raise. Frank Anderson is married to a cousin of Steve and Jeff Couture. Steven Couture's brother, Jeff Couture, was an outspoken union advocate. At one point, Martin requested that Jeff Couture address a crew meeting to explain why Jeff Couture felt employees needed a union. Klepzig agreed that he supposed Steven Couture was for the Union because his brother Jeff was. Steven Couture attended union meetings at the airport and distributed union literature at the airport and on the Slope to different rigs. He also had discussions with driller Charlie Noakes about the Union.

Martin recalled a meeting 2 or 3 months before Anderson was discharged at which he told the hands if he caught them smoking pot they would be discharged and he would see to it that they would never work for Nabors again. Martin testified that he called the meeting because he smelled marijuana in the bathroom and confronted Anderson, who was leaving the bathroom, but who denied smoking.

Anderson acknowledged that he was aware that Nabors maintained a no-tolerance drug policy. Employees were routinely drug tested as a preemployment condition. Anderson denied using drugs and specifically denied smoking marijuana on February 10, 1996. Anderson recalled a safety meeting about 8 months prior to his discharge in which Charlie Martin admonished all employees that anyone caught smoking pot would be fired. Anderson testified that he stayed behind and asked Martin what the warning was all about and Martin told him that he was pretty sure that one of the hands was stoned all of the time.[10] Anderson agreed that his position of pit watcher was crucial. Inattention to the pit could cause a blow out or other malfunction, endangering other employees. In fact, Anderson was aware of fatalities which had occurred due to a blow out. He agreed that if an employee caused a blow out due to drug use, the employee should be discharged.

On Saturday, February 10, 1996, Anderson worked the p.m. ''tower'' or shift. One break is allowed on this midnight to noon shift for lunch. Anderson took his lunch break around 6 a.m. and on his way back to the pit went to the office of Steven Couture in the sewage plant to discuss Steven Couture's use of Anderson's snow plow. Because of the smell of an open sewage tank, Anderson testified he sprayed Lysol in the office. During their conversation, they heard the front door open, Anderson, who did not want to be caught away from his work station, closed Couture's office door and because it was in the ''lock'' position, the door locked. Steven Couture reached over to unlock the door and at the same time, Brian Buzby attempted to push the door inward to open it. According to Anderson, Buzby told him to get back to his work station and Anderson left. Buzby told Couture to go up and clean out the housekeeper's lockers because another crew was coming and would have to stay in those rooms. The keys did not fit so Couture had to use a grinder. He completed this task and fixed a washing machine.

According to Buzby, when he opened the door, he saw Steven Couture fumbling with ''some stuff'' on his desk. Buzby testified that he smelled the aroma of burned marijuana and asked Anderson and Couture what the hell they were doing. Neither of them replied. Anderson left and Buzby asked Couture if he had a key for the housekeeper's lockers. Buzby explained that he was shocked, disappointed, and angry, and did not know what to do and that was why he did not mention the smell of marijuana. However, it was his impression that the two had been smoking marijuana. Buzby explained that he let Anderson go back to the mud pits because he was confused and did not know what to do.

[10] Martin stated in his affidavit to the NLRB that before February 10, 1996, he had no indication that Anderson smoked marijuana. However, Martin was later reminded of the bathroom incident. Although Martin denied the conversation with Anderson about one of the hands being stoned, I find that such a conversation in all likelihood did take place.

Buzby returned to his office and decided he should fire the two. He contacted Belinda Wilson, personnel manager, at her home. She said she would confer with Jim Denney, president of the Company, and call him back. When Wilson called back, she told Buzby to make sure the employees knew why they were being fired and to have Charlie Martin come in and be present during their exit interviews. Wilson told Buzby that if there was any doubt in his mind or in theirs, someone would meet them at the airport to escort them to a urinalysis.

After contacting Belinda Wilson by telephone, Buzby went to the mud pits and told Frank Anderson he was being sent to town. According to Buzby, Anderson said nothing. Being sent to town means that one is being discharged. A short time later, Anderson went to Buzby's office and told him ''that wouldn't happen again.'' Buzby responded he just could not have ''that'' out on the rig and Anderson said, ''it's nothing we do all the time.'' Anderson explained that there had been no mention of marijuana and he thought he was being sent to town because he was in the sewage plant instead of watching the pits, his assigned job. Buzby agreed that there had been no mention of marijuana during the meeting. At about 9 Buzby called Steven Couture into his office. Buzby asked him to close the door and said he would have to send him to town. Both Couture and Buzby agree that there was no mention of marijuana during this conversation. Couture, thinking he was being sent to town because Anderson had been found in his office, asked if it would do any good to tell him it wouldn't happen again. Buzby said no. Couture fixed an overflowing shower and then packed his personal tools and went out to pits to talk with Frank to find out if he was getting sent to town too. Frank confirmed that he was on the 1:30 flight.

Buzby then called Steven Couture and Frank Anderson to his office. Martin was also present in the office. According to Martin, Buzby initially told them, ''[Y]ou both know why you're being sent to town.'' Neither of them responded. Buzby told Anderson and Couture that if they wanted to take a UA (urinalysis) when they got to town, they could, and if they passed they could come back. Steven Couture and Frank Anderson recalled the conversation the same as Martin although Anderson recalled asking if he could come back that hitch and Buzby said that would depend on the flights. According to Buzby, he asked if Steven Couture and Frank Anderson knew why they were being terminated and they both nodded their heads yes. Buzby recalled that he asked them if they would take a urine test and they both immediately said yes. However, Buzby explained that in his view, such a test would be for their own personal use because they were terminated. Buzby also recalled that when he was asked whether the employees could have their jobs back if they passed the urinalysis, he told them he did not know. The four are in agreement that no words such as marijuana, smoke, pot, dope or any such words were used in the meeting. I credit Martin, Couture, and Anderson that the employees were told they could return to work if they passed the urinalysis.

Couture and Anderson arrived at the Anchorage airport around 5 or 5:30 p.m. because their flight was delayed. They stayed at the airport waiting for someone from Nabors to arrange the drug test. Anderson called Belinda Wilson but got no answer. Then they went to the airport bar. No one from Nabors showed up. After having some beers, Anderson and Couture left the airport.

Wilson stated that she received no calls from Anderson or Couture that weekend. Although Buzby reported to Wilson that the employees were on the way back to town, Wilson did not arrange for a drug test because, in her view, there was no need for one. She testified she had been assured by Buzby and Martin that the employees understood the reason for discharge and just wanted to keep their jobs if they promised not to do it again. I do not credit this reason. I note that Martin was not a party to the conversations regarding promising not to do ''it'' or ''that'' again. Moreover, Buzby and Martin are in complete agreement that the employees were offered the option of a urinalysis and both agreed that the employees wanted to take the urinalysis.

On Tuesday, the remaining employees on the rig were tested (unobserved) and two who tested positive were discharged. However, both of them returned for a 2-week hitch at a later time. Wilson explained that employees are eligible for rehire if they flunk a urinalysis but are not eligible for rehire if they are caught smoking on the job.

According to Wilson, the Company's drug policy requires immediate termination for use of drugs in the work place. From 1985, when Wilson started as personnel director, these are the only two employees who have been discharged for use of drugs in the work place. Wilson enforces the drug policies by making sure that preemployment drug testing and random drug testing is performed.

Nabors' policies prohibit working on a drilling rig when under the influence of a nonprescribed controlled substance. In addition to preemployment urinalysis screening, the policies provide for unannounced screening in which a positive test results in immediate suspension pending investigation. Postaccident and/or suspected abuse screening is also provided for as follows:

> Employees involved in an industrial accident wherein drug or alcohol use is a suspected factor, shall be required to undergo a urinalysis screening. This screening shall be conducted as soon as practical after the accident. If drug or alcohol use is detected, the employee shall be suspended from employment pending a complete investigation of the accident.
>
> Employees suspected of using controlled substances and/or alcohol shall be required to undergo the urinalysis process. Report of usage or observations of impaired performance may be grounds for requesting that an employee be administered the urinalysis.

Finally, with regard to suspension, termination, and rehabilitation, the policies provide:

> Employees with a ''positive'' urine sample will be immediately suspended and removed from the jobsite. The remaining urine specimen of the employee involved shall be transported to an appropriate laboratory for confirmation of the analysis. Chain of custody of the specimen shall be maintained at all times.
>
> If the laboratory confirms the ''positive'' analysis the employee shall be terminated from employment with Nabors Alaska Drilling, Inc. and will not be considered for rehire for a period of 90 days.

> Current employees, or personnel terminated from employment due to drug or alcohol abuse, may be eligible to receive assistance from [Nabors] in participating in a rehabilitation program. Former employees successfully completing a bonafide rehabilitation program may be considered for reemployment with [Nabors].

The parties stipulated that company files indicate a number of employees over the years since the early 1980s have tested positive on drug or alcohol tests and have in fact been suspended and then terminated and then afforded an opportunity to reestablish their employment relationship after a period of 90 days. Wilson explained that this policy was not followed with respect to Steven Couture and Frank Anderson because, ''it was reported that they were caught violating a company policy and rule regarding drug usage on the job site while they were supposed to be working.''

On Monday, February 12, both Steven Couture and Frank Anderson underwent urinalysis at the laboratory utilized by Nabors for preemployment and random drug screening. Anderson called Wilson while he was waiting to take the test and Wilson questioned why he was having the test. Anderson responded that Buzby had told the employees that if they passed the test they could come back to work. Wilson stated again that she did not care because they had been caught smoking marijuana.[11]

Analysis

I find that both Steven Couture and Frank Anderson were known or suspected to be union sympathizers. As mentioned above, animus is supplied by various threats, interrogation, and impression of surveillance. I draw an inference of unlawful motivation from the Respondent's failure to follow its procedures which require that employees suspected of using drugs, ''shall be required to undergo the urinalysis process.'' Buzby volunteered that the two could take a urinalysis. Moreover, Martin, Couture, and Anderson agree that Buzby said the employees could return to work if they tested negative. Wilson cautioned Buzby that if there was any doubt about the matter, the employees should be tested. All of these actions are consistent with a policy of immediate suspension pending investigation. However, when Anderson called Wilson to let her know he was being tested, she said the decision had already been made to terminate them regardless of the drug test.

In support of its defense, the Respondent overstates its case in two respects. First, it claims these employees were ''caught'' smoking marijuana. However, even giving Buzby's account full credit, he did not actually observe the two smoking marijuana. He certainly may have suspected use of marijuana but there is nothing to distinguish Buzby's walking into the sewage plant office and smelling marijuana from Martin's smelling marijuana when Anderson emerged from the private bathroom several months earlier. Buzby did not claim to have seen a marijuana cigarette or any evidence of smoke. Buzby did not mention his concerns to the employees and the matter of the odor from the open sewage tank was not addressed.

Second, the Respondent's policies do not mandate immediate discharge if an employee is reported to be using a controlled substance or observed with impaired performance. In both cases, the employee is required to undergo urinalysis. The Respondent's failure to follow its policy in this regard leads me to conclude that but for their protected activity, the two would have been allowed to take the urinalysis and return to work if valid negative results were obtained.

Conclusion of Law

By discharging Ronald Mike Pearson, Steven Couture, and Frank Anderson, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having discriminatorily discharged its employees Ronald Mike Pearson, Steven Couture, and Frank Anderson, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Nabors Alaska Drilling, Inc., Anchorage, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from discriminatorily discharging employees because of their activities and support for Alaska State District Council of Laborers, AFL–CIO and in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Ronald Mike Pearson, Steven Couture, and Frank Anderson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Ronald Mike Pearson, Steven Couture, and Frank Anderson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

[11] Given the Respondent's position that the employees were discharged regardless of the results of the tests, I find irrelevant both the results and validity of these tests and subsequent tests procured by Anderson and Couture.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities and offices in the state of Alaska copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Alaska State District Council of Laborers, AFL–CIO or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Ronald Mike Pearson, Steven Couture, and Frank Anderson full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Ronald Mike Pearson, Steven Couture, and Frank Anderson whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Ronald Mike Pearson, Steven Couture, and Frank Anderson, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

NABORS ALASKA DRILLING, INC.